

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3954 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIRALDAS PANNALAL TOTLANI

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR IM KAPUR for Petitioners

MR RR MARSHALL for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 26/11/96

ORAL JUDGEMENT

The appellants have challenged the judgment and order passed by the City Civil Court, Ahmedabad in Civil Suit No. 3799 of 1986 by way of this appeal. The suit was for declaration and permanent injunction.

It is the case of the appellants that instead of old construction, they have carried out new construction

and, therefore, the respondent Corporation is not entitled to issue notice under section 260(1) of the BMC Act for demolition of the construction. The learned trial judge has, as stated above, negatived the contention of the appellants by holding that the appellants have constructed new shops without obtaining permission.

Mr. Kapoor learned advocate for the appellants submitted that the respondent corporation has not stated anything about the construction being unauthorised in their written statement. Mr. Kapoor further submitted that even if the construction is held to be unauthorised, it is not necessary that the order of demolition be passed. In support of his submission, reliance is placed on the judgments of this Court reported in 13 GLR p.946 and AIR 1972 Calcutta, p. 459. It is not possible for me to accept the submission of Mr Kapoor as the corporation in its written statement has clearly stated that Nausir Sorabji is the owner of the land bearing revenue Survey no. 629/24 of Old Vadaaj, that on or about 10th September, 1985, it was found that the plaintiff no. 1 had carried out construction of shops on the ground floor and also made construction on the first floor without permission of the defendant as required under rule 6 of Chapter XII of Schedule-A of the BMC Act, 1949, and, therefore, notices under section 260(1) of BMC Act were issued to the plaintiff no. 1 and to the other occupiers of the shops and also to Nausir Surabji. Thus, it is the case of the corporation right from the beginning that the construction of the shops was illegal and without authority. As can be seen from the observation of the learned trial judge that there is a 40 ft wide T.P. Road and on the Northern side of suit property and there is 20 ft. wide road on the Eastern side of it i.e. Northern wall and the Eastern wall of the suit property are falling on the roads and that three doors are open falling on Northern side road and two doors are then falling on the Eastern side road, that one room of shop has been converted into five shops and RCC staircase has been put up alongwith construction and one room in part of galleries and that the suit property is falling on TP road on one side and on 20 ft wide other road, I am of the opinion that the entire construction is abutting to the main road and considering the same the learned trial judge has rightly decided the suit. The principle laid down in the aforesaid two decisions cannot be made applicable in the present case in view of the fact and circumstances of the present case.

Mr. Kapoor has made a grievance that the notice under section 260 (1) of the Act has been given by the

Deputy T.D.O. who is not authorised to give notice and, therefore, the initiation of the proceedings for demolition itself is illegal and, therefore, no action pursuant to the same can be taken against the appellants. This contention was raised before the learned trial judge and in Para-20 of the judgment the learned trial judge has observed that "... the learned advocate for the defendant has drawn my attention on mark 19/6 which is a printed copy of the office order No. 2265 dt. 22.9.1975 of the Municipal Commissioner, Municipal corporation, Ahmedabad. This order is under sub section (1) of Section 69 of BPMC Act, regarding delegation of power. Nothing has been submitted against its authenticity. This document shows that the Dy. T.D.O. has been delegated all the powers under sec. 260 of the BPMC Act which are exercisable by the Municipal Commissioner. All the notices under sec. 260(1) and 260(2) of the BPMC Act on record have been signed by the Dy. T.D.O. In view of this observation, I am of the opinion that it hardly lies in the mouth of the appellants to contend about the legality of the notices aspecially when they have not challenged the authenticity of the notices.

No other contentions have been raised by the learned advocate for the appellants.

In view of the aforesaid discussion, I see no merits in the appeal and the same is dismissed with no order as to costs.

Mr. Kapoor at this stage, requests this Court to continue the ad interim relief granted by this court to enable the appellants to approach higher forum. Considering the facts and circumstances of this case, ad interim relief granted earlier by this court is continued till 4 weeks from today. Subject to this, notice is discharged with no order as to costs in Civil Application No. 7924 of 1996.